

HOUSE BILL 2692

By Casada

AN ACT to amend Tennessee Code Annotated, Title 39,
Chapter 13 and Title 40, relative to lewd and
indecent behavior.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 39-13-511, is amended by deleting subsection (a) in its entirety and by redesignating the remaining subsections accordingly.

SECTION 2. Tennessee Code Annotated, Section 39-13-511, is amended by deleting the current subdivision (b)(2) and by substituting instead the following:

(2)

(A) "Indecent exposure", as defined in subdivision (b)(1), is a Class B misdemeanor, unless the defendant is eighteen (18) years of age or older and the victim is under thirteen (13) years of age, in which event, indecent exposure is a Class A misdemeanor.

(B) "Indecent exposure", as defined in subdivision (b)(1), is a Class E felony if the defendant is eighteen (18) years of age or older and the victim is under thirteen (13) years of age and the offense occurs on the property of any public school, private or parochial school, licensed day care center or other child care facility during a time at which a child or children are likely to be present on the property.

(C) "Indecent exposure", as defined in subdivision (b)(1), is a Class E felony when the defendant is eighteen (18) years of age or older, the victim is under thirteen (13) years of age, and the defendant has any combination of two (2) or more prior convictions under this section.

SECTION 3. Tennessee Code Annotated, Title 39, Chapter 13, Part 5, is amended by adding the following as a new section:

39-13-517.

(a) As used in this section:

(1) "Nudity" or "state of nudity" means the showing of the bare human male or female genitals or pubic area with less than a fully opaque covering, the showing of the female breast with less than a fully opaque covering of the areola, or the showing of the covered male genitals in a discernibly turgid state. Nudity or state of nudity does not include a mother in the act of nursing the mother's baby; and

(2)

(A) "Public place" means any location frequented by the public, or where the public is present or likely to be present, or where a person may reasonably be expected to be observed by members of the public. Public place includes, but is not limited to, streets, sidewalks, parks, beaches, business and commercial establishments, whether for profit or not-for-profit and whether open to the public at large or where entrance is limited by a cover charge or membership requirement, bottle clubs, hotels, motels, restaurants, night clubs, country clubs, cabarets and meeting facilities utilized by any religious, social, fraternal or similar organizations.

(B) Premises used solely as a private residence, whether permanent or temporary in nature, are not deemed to be a public place. Public place does not include enclosed single sex public restrooms, enclosed single sex functional showers, locker or dressing room facilities, enclosed motel rooms and hotel rooms designed and intended for

sleeping accommodations, doctors' offices, portions of hospitals and similar places in which nudity or exposure is necessarily and customarily expected outside of the home and the sphere of privacy constitutionally protected therein; nor does it include a person appearing in a state of nudity in a modeling class operated by a proprietary school, licensed by the state of Tennessee, a college, junior college, or university supported entirely or partly by taxation, or a private college or university where such private college or university maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation or an accredited private college. Public place does not include a private facility that has been formed as a family-oriented clothing optional facility, properly licensed by the state.

(b) A person commits the offense of public indecency who, in a public place, knowingly or intentionally:

- (1) Engages in sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation, excretory functions or other ultimate sex acts;
- (2) Appears in a state of nudity; or
- (3) Fondles the genitals of the person, or another person.

(c) A person does not violate subsection (b) if the person makes intentional and reasonable attempts to conceal the person from public view while performing an excretory function, and the person performs the function in an unincorporated area of the state.

(d) Public indecency is punishable as follows:

(1) A first or second offense is a Class B misdemeanor punishable only by a fine of five hundred dollars (\$500) unless otherwise specified under subdivision (3);

(2) A third or subsequent offense is a Class A misdemeanor punishable by a fine of one thousand five hundred dollars (\$1,500) or confinement for not more than eleven (11) months and twenty-nine (29) days; and

(3)(A) Notwithstanding subdivisions (1) and (2), where the offense involves the defendant engaging in masturbation by self-stimulation, or the use of an inanimate object, on the property of any public school, private or parochial school, licensed day care center, or other child care facility, and the defendant knows or reasonably should know that a child or children are likely to be present on the property at the time of the conduct, the offense is a Class E felony.

(B) Where a person is charged with a violation under subdivision (d)(3)(A), and the court grants judicial diversion under § 40-35-313, the court shall order, as a condition of probation, that the person be enrolled in a satellite-based monitoring program for the full extent of the person's term of probation, in a manner consistent with the requirements of § 40-39-302.

(e) If a person is arrested for public indecency while working as an employee or a contractor, the employer or principal may be held liable for a fine imposed by subdivision (d); provided, however, the employer may not be held liable under this section unless it is shown the employer knew or should have known the acts of the employee or contractor were in violation of this section.

(f) This section does not apply to any theatrical production that contains nudity performed in a theater by a professional or amateur theatrical or musical company that

has serious artistic merit, provided that the production is not in violation of chapter 17, part 9 of this title.

(g) This section shall not affect in any fashion the ability of local jurisdictions or the state of Tennessee to regulate any activity where alcoholic beverages, including malt beverages, are sold for consumption.

SECTION 4. This act shall take effect July 1, 2012, the public welfare requiring it.